

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2555 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No.

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RAMBHABEN D/O PANNABHAI

Versus

CIVIL JUDGE (SENIOR DIVISION)

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Appearance:

MR MP PRAJAPATI for Petitioner  
MS HARSHA DEVANI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 1/12/97

CAV JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, an employee working in the District Court, Surendranagar, has filed this special civil application praying for direction to the respondents to

treat her as full time employee on the establishment of the District Court, Surendranagar and to appoint her daughter as full time employee on the establishment of the District Court, Surendranagar. A prayer has also been made for quashing and setting aside the letter dated 12.3.1990, Annexure F. The petitioner has lastly prayed for direction to the respondents to pay her difference of wages of full time employee and part time employee since April 2, 1975 with interest at the rate of 12% per annum.

By letter dated 12.3.1990, Annexure F, office of the respondent No.2 asked the petitioner to discharge her duties properly and if she fails to do so, her services are likely to be terminated. But the fact remains that her services are not terminated. Not only this, but this Court has also protected the petitioner by grant of interim relief directing the respondents not to terminate her services.

I do not find any justification and/or any legal or fundamental right of the petitioner to pray for direction to the respondents to give appointment to her daughter as full time employee on the establishment of the District Court, Surendranagar. No such direction can be given by this Court for giving appointment to the daughter of the petitioner as full time employee.

During the course of arguments learned counsel for the petitioner could not produce before this Court any statutory provision or any resolution or circular of the Government which provides for giving appointment to any person merely on asking by him/her.

The respondents have in the reply come up with the case that the petitioner has been engaged only as a part time employee for cleaning the District Court and the working hours of the petitioner are three hours a day under respondent No.2 and two hours under the respondent No.1. She has been paid wages as per the rates prescribes by the State Government for part-timers. The respondents in reply to the special civil application have also made a grievance that the petitioner is not performing her duties sincerely and scrupulously. There were reports and complaints against the petitioner about not performing her duties properly and not cleaning the latrines and urinals which are situated within the Court premises. Despite orally informing her from time to time, no improvement was found in her working. The respondent No.2 has further come up with the case that looking to the quality of the work done by the petitioner, she cannot be recommended for full time

employment. A further defence has been taken that the nature of work to be discharged by the petitioner hardly needs full days work. In the reply, reference has also been made to certain other litigation taken by the petitioner in connection with the action taken by the respondents under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act. The order of her eviction has been passed by the concerned authorities but this Court in special civil application No.8842 of 1989 has granted stay order in favour of the petitioner.

So, there are serious disputed question of facts between the parties relating to the working hours of the petitioner. The petitioner has come up with the case that looking to the quantum of the work required to be done by her, it can only be done by four full time sweepers. She further states that she works for more than 7 1/2 hours a day, her daughter also works for 7 1/2 hours a day and her husband is also working for 3 1/2 hours in a day. The petitioner states that in doing the work she is taking help of her daughter and husband also but still she has been paid a nominal amount by way of wages.

In a petition under Article 226 of the Constitution it is not permissible for this court to go into the disputed question of facts as under Article 226 of the Constitution it does not take the evidence, but evidence in the form of affidavits are taken on the record. The disputed question of facts regarding nature and hours of work raised in the present case are too difficult to be decided on the basis of the affidavits. Not only this, there are other questions of facts which have been raised that the petitioner, her husband and daughter are working and the three together put 18 hours work every day. Earlier, this court in this petition passed an order to send proposal to the government for creation of permanent post of sweeper and it is really a surprising state of affair that the learned counsel for the respondents, which include this Court also, is unable to disclose before this Court the ultimate decision of the Government taken on the proposal made by the respondents. In the reply much emphasis has been laid by the respondent No.2 against the petitioner's working. The respondent No.2 seems to be dissatisfied with the work of the petitioner. This is again a question of fact to which this Court is not in a position to make inquiry. However, in case the petitioner was not discharging her duties to the satisfaction of the respondent No.2, I fail to see any reason as to what for the respondent No.2 has tolerated

such an indisciplined employee in the service. Merely giving a letter of warning is not the end of the matter. In case the employee is not working to the satisfaction of the employer, the employer can dispense with his/her services. That is another question which stands unreplied by the respondents.

However, it is not in dispute that the petitioner is working with the respondent No.2 since 1975. Even if it is taken to be a case where the nature of the work to be done by the petitioner needs only a part time employee still I fail to see any justification in the action of the respondents in continuing a person on part time basis for all the years to come. A person may be appointed on part time basis where the work is only for few hours. But after reasonable time he should be considered for regular appointment when vacancies arise and if he/she is found suitable for the appointment on regular post on full time basis, he/she may be given appointment. But continuing a person as a part time employee, in this case for more than 22 years, is unfair. She may reach the age of superannuation while working as a part time employee and in that case she will not get any retirement benefits. This is certainly a matter of serious concern not only of the respondent No.2 but of this Court also, which is one of the respondents. I am constrained to observe here that in case a person continues on part time basis for long period, certainly it results in dissatisfaction and frustration as a person who enters in service of the respondent No.2 has a reasonable aspiration for his regular appointment after reasonable time. But to continue a person as a part timer for all the time to come and after extracting his youth as a part timer, the employer cannot leave him/her to be without any retirement benefits whatsoever on attaining the age of retirement which is certainly unfair, unreasonable and it may be a case violating the provisions of Article 21 of the Constitution of India. Part timers should have been given reservation in regular employment after their working for some reasonable time. If they are not regularised after some years of service the part timers will not be satisfied as they are not getting sufficient salaries and their future prospects in the service for all the times is dormant. How far it can be expected from them to be sincere, honest and hard working for all the time to come?

The worst part of the case is that the proposal made by the District Judge in compliance of the order of this Court dated 16.8.1990 has not been matured or given the final shape. Though all the respondents have failed to

produce before this Court as to what action is taken by the Government on the proposal sent by the District Judge, Surendranagar in compliance of the order of this Court. But that matter does not shock me much in this case because during this period of 22 years it is difficult to believe that no permanent and regular Class IV post would have fallen vacant on the establishment of the District Court, Surendranagar. When such a post had fallen vacant at the time of the recruitment the petitioner's case should have been considered and in case she was found suitable for appointment she should have been given appointment. Even after working for a reasonable period of time a part timer automatically does not become entitled to get appointment as full timer and that too on permanent basis. However, after working for a reasonable period, there may be some justification in her claiming the right for consideration for appointment on regular basis and to give preference to her. However, care has to be taken in such cases while making appointment on part time basis also, that is, the part time appointment also should have been made by open selection. A person who has got back-door entry as a part timer may not be given the right for consideration on regular basis. However, the facts of this case are peculiar and whatever was done it has been done in the year 1975 and the fact that for all these years the petitioner is not considered for regular appointment is certainly a matter which deserves to be deprecated by this Court. It is a matter pertaining to judiciary and I am constrained to observe that judiciary should have been acted fairly and it should not have been dependent upon the creation of permanent post by the Government on its proposal but as and when permanent post was available, the respondent No.2 should have considered her case for appointment on regular basis.

Be that it may. This writ petition is disposed of in the terms that as and when permanent post of Class IV falls vacant on the establishment of the District Court, Surendranagar, candidature of the petitioner should be considered for giving her regular appointment and in case the petitioner is found suitable, she should be given appointment on regular basis. Thereafter the question of giving her appointment from back date has to be considered by this Court on the administrative side on the representation made by the petitioner. The petitioner filed this special civil application before this Court in the year 1990 and in case ultimately the petitioner is found suitable for regular appointment on Class IV post there may have some justification in her claim to give her all the benefits of Class IV post from

the date of filing of this special civil application. However, nothing finally I am deciding on this aspect in this petition. As already observed, that has to be decided on the administrative side on the representation after her selection for Class IV post on regular basis. The special civil application and the Rule stand disposed of in the aforesaid terms with no order as to costs.

This judgment will not give any liberty or licence to the petitioner not to discharge her duties to the satisfaction of the respondent No.2. It is made clear that in case the petitioner is not discharging her duties to the satisfaction of the respondent No.2, he is at liberty to take appropriate action, including termination of service of the petitioner.

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